IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL NO. 260 OF 1988

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge ?

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UNITED INDIA INSURANCE CO. - Appellant(s)
Versus
YUVRAJ PANDURANG KADAM & ORS. - Respondent(s)

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Appearance :
Dr. Amee Yajnik for Appellant(s).
None for Respondent(s) : 1 – 4 though served.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 06/08/2007

ORAL JUDGMENT

The appellant-Insurance Company, being aggrieved by the award dated 17th December, 1984 passed by the learned Motor Accident

Claims Tribunal (Main), Bharuch in M.A.C.P. No.219 of 1983, is before this Court with a submission that the learned Tribunal below was unjustified in holding that the original non-claimant No.1, namely, Vishwanath Ramchandra Chauhan, was driving the vehicle, which was owned by Bhaskar Rao Annaji Pawar, and as he was driving the vehicle rashly and negligently, the Insurance Company would be liable to compensate the original claimant/present respondent No.1.

2. After taking me through the evidence available on the record and the findings recorded by the learned Tribunal below, it was submitted that the learned Tribunal below, though found that there was some collusion between the claimant, owner of the truck and respondent No.4, but, without recording a further finding that what would be the effect of such collusion, the learned Tribunal could not award the amount and consequently, could not hold the appellant liable. It is also submitted that in the police papers, the present respondent No.4 - Hindurao Pandurang Kadam was shown as the driver and he was convicted by the learned Criminal Court and if the said judgement has attained finality, then, the finding contrary to the guilt of the present respondent No.4 could not have been recorded.

3. The learned Tribunal below, in paragraph 9 of its judgement, has clearly observed that respondent No.4 was the brother of

the claimant and "opponent No.2 (respondent No.3), i.e. owner, would be interested in seeing that the whole liability should be shifted upon opponent No.3, who is the present appellant – Insurance Company, and therefore, some collusion seems to have been practised". If that was the finding, then, the learned Tribunal below should have further seen that what would be the effect of such collusion. Once the Court records a finding about the collusion, then, procedure of the Court cannot be allowed to be corrupted. The learned Tribunal below should have recorded a specific finding that whether there was collusion or not and if there was collusion, what would be the effect of the same.

4. Taking into consideration the fact that the findings recorded by the learned Tribunal below that there was collusion between the claimant, owner of the truck and respondent No.4, and that the present respondent No.4 was shown driving the vehicle in the police papers and he has been convicted for that offence, I consider present to be a fit case for remand to the learned Tribunal below to rehear the parties and record specific findings.

5. The appeal is allowed. The award made by the learned Court below is set aside. The appellant shall appear before the learned Tribunal below on 19th September, 2007 and would produce a copy of this order, enabling the learned Tribunal below to know as to what it is

required to do. As the respondents are not present in this Court, the learned Tribunal below shall issue fresh Notices to them and after effecting service of notices upon all of them, shall hear the parties and decide the matter in accordance with law. No costs.

[R.S.Garg, J.]

*kamlesh**